

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

**Matthew McCormick and Gina
McCormick (H/W),**

Plaintiffs,

v.

Molina Healthcare of Texas, Inc.

Defendant.

Case No. 1:22-cv-18

Complaint and Demand for Jury Trial

COMPLAINT

Matthew McCormick and Gina McCormick (hereinafter referred to as “the McCormicks” or “Plaintiffs”), by and through their attorneys, **Kimmel & Silverman, P.C.**, alleges the following against **Molina Healthcare of Texas, Inc.** (hereinafter referred to as “Molina” or “Defendant:):

Introduction

1. Plaintiffs’ Complaint is based on the Telephone Consumer Protection Act (TCPA), 47 U.S.C. §227 *et seq.*
2. In 1991, President George H.W. Bush signed into law the TCPA, which was passed in a bi-partisan manner, to protect consumers’ privacy rights; specifically, the right to be left alone from unwanted telemarketing calls.
3. A leading sponsor of the TCPA described telemarketing “robocalls” the scourge of modern civilization.” 137 Cong. Rec. 30821 (1991).

4. The TCPA, through the accompanying Code of Federal Regulations, 47 C.F.R. § 64.1200 *et seq.*, affords special protections for people who registered their phone numbers on the National Do Not Call Registry.

5. Where a consumer's phone number is registered on the Do Not Call registry, the TCPA requires that telemarketers provide clear and conspicuous notice to the consumer that it will be making telemarketing calls for solicitation or advertising purposes, and requires that the consumer provide express written consent.

6. Section 227(c)(5) of the TCPA provides that each person who receives more than one call within a 12-month period on their phone, where that person did not provide express written consent upon a clear and conspicuous disclosure from the telemarketer, after the phone number was registered on the National Do Not Call Registry for more than 31 days is entitled to recover a penalty of \$500 per call, and up to \$1,500 per call if the TCPA is willfully or knowingly violated.

7. Plaintiffs seek to exercise their rights under the TCPA against Molina Healthcare of Texas for unlawful robocalls which were made for telemarketing purposes without prior express written consent.

The Parties

8. Plaintiff Gina McCormick is an adult citizen who at all times relevant to this Complaint resided in Prosper, Texas 75078.

9. Plaintiff Matthew McCormick is an adult citizen who at all times relevant to this Complaint resided in Prosper, Texas 75078.

10. Defendant Molina Healthcare of Texas is an insurance company that maintains its headquarters 701 Brazos St., Suite 1050, Austin, Texas 78701.

11. Molina is a for-profit insurance company.

Jurisdiction and Venue

12. This Court has subject-matter jurisdiction over the TCPA claims in this action under 28 U.S.C. § 1331, which grants this court original jurisdiction of all civil actions arising under the laws of the United States. See Mims v. Arrow Fin. Servs., LLC, 565 U.S. 368, 386-87 (2012) (confirming that 28 U.S.C. § 1331 grants the United States district courts federal-question subject-matter jurisdiction to hear private civil suits under the TCPA).

13. This Court has personal jurisdiction over Defendant conducts business in the State of Texas.

14. Defendant Molina is headquartered in Austin, Texas, which is within this District.

15. A substantial percentage of the occurrences and events which underlie this lawsuit occurred within this District.

16. Venue is proper under 28 U.S.C. § 1391(b)(1) and (2).

Statement of Relevant Facts

17. At all times relevant to this Complaint, Mr. McCormick owned a cell phone, the number for which was (214) XXX-9117.

18. Mr. McCormick used that cell phone primarily for residential purposes.

19. Mr. McCormick registered his cell phone number on the National Do Not Call Registry on or around July 1, 2014.

20. Mr. McCormick registered his cell phone number on the National Do Not Call Registry to obtain solitude from unwanted and invasive telemarketing calls.

21. At all times relevant to this Complaint, Mrs. McCormick owned a cell phone, the number for which was (469) XXX-4158.

22. Mrs. McCormick used that cell phone primarily for residential purposes.

23. Molina Healthcare is a national insurance provider that sells various medical insurance plans to consumers.

24. Molina Healthcare markets their products and services, in part, through placing telephone calls to prospective subscribers' cellular and landline phones.

25. Molina Healthcare placed numerous unwanted calls to the McCormicks' cell phones using a Spanish-language artificial or pre-recorded voice.

26. Before Molina Healthcare began placing telemarketing calls to the McCormicks' cell phones, neither Mr. nor Mrs. McCormick provided express written consent, or any consent for Defendant to place such telemarketing calls.

27. Likewise, Defendant did not present a clear and conspicuous disclosure to either of the McCormicks that it would make telemarketing calls to their cell phones.

28. Neither of the McCormicks had any prior business relationship with Molina Healthcare.

29. The McCormicks were not in the market for medical insurance and had not consented to receive calls from telemarketers selling the same.

30. Prior to the solicitation calls at issue, neither Mr. nor Mrs. McCormick ever inquired of Defendant about health insurance products or services.

31. Despite the foregoing, Defendant placed a shocking and extraordinary volume of invasive and irritating telemarketing calls to the McCormicks' cell phones in furtherance of its efforts to sell medical insurance, for which the which the McCormicks had no interest or need.

32. Defendant's telemarketing calls to Plaintiff utilized a prerecorded voice in an effort to solicit business.

33. All of Defendant's calls utilized a pre-recorded voice in the Spanish language.

34. The McCormicks, who do not speak fluent Spanish, were unable to understand the Spanish-language pre-recorded messages from Molina.

35. In order to ascertain the identity of the calling party, Plaintiffs resorted to pressing random buttons to be able to connect with a live agent.

36. On several instances, including on or around July 28, 2020 as well as on or around October 26, 2020, a live agent identified the company responsible for the calls as being "Molina Healthcare."

37. The other calls where "Molina" was not explicitly identified had a pre-recorded scripts identical or nearly identical to those which played at the beginning of the calls where agents of Molina ultimately identified themselves as working for Molina.

38. Accordingly, Plaintiffs know that each of the calls identified in the charts below were from Molina.

39. Upon being connected with a live agent, the McCormicks asked if the agents spoke English in order to inquire about the purpose for the calls.

40. On some occasions, the live agent would indicate they do not speak English and would end the call.

41. The McCormicks were not presented with a mechanism or reasonable method of "opting-out" or otherwise causing the calls from Molina to cease.

42. The McCormicks, with their limited ability to speak and understand Spanish, requested the live agent to identify the company from which they were calling.

43. For investigative purposes, the McCormicks enlisted the services of another individual, fluent in Spanish, take the calls to ascertain as much as possible.

44. During one of these calls, on January 19, 2021, Defendant's agent would not provide a call back number for the company, but rather insisted that the individual use WhatsApp—a mobile messaging platform which does not utilize actual telephone numbers and provides the send a way to remain confidential.

45. Additionally, each call that both Plaintiffs answered from Defendant contained pre-recorded Spanish language messages identical or similar to the others.

46. Mr. McCormick received calls on instances including but not limited to the following

<u>Date and Time</u>	<u>Caller ID:</u>	
June 29, 2020 at 11:15 am Central	(214) 952 1808	
June 30, 2020 at 1:21 pm Central	(214) 887-6927	
June 30, 2020 at 4:44 pm Central	(214) 482-0011	
July 1, 2020 at 3:50 pm Central	(903) 405-6693	
July 2, 2020 at 12:41 pm Central	(903) 405 6693	
July 2, 2020 at 2:14 pm Central	(806) 386-2374	
July 7, 2020 at 1:37 pm Central	(361) 511-4364	
July 8, 2020 at 5:34 pm Central	(214) 902-6143	
July 10, 2020 at 8:15 am Central	(210) 460-2425	
July 10, 2020 at 2:46 pm Central	(903) 493-3655	
July 14, 2020 at 1:56 pm Central	(972) 774-2373	
July 15, 2020 at 1:02 pm Central	(954) 268-3721	
July 16, 2020 at 4:13 pm Central	(737) 757-4649	
July 17, 2020 at 3:03 pm Central	(972) 228-6369	
July 20, 2020 at 2:14 pm Central	(469) 850-4175	
July 22, 2020 at 4:08 pm Central	(281) 304-3486	
July 28, 2020 at 3:27 pm Central	(409) 228-4299	

July 29, 2020 at 2:30 pm Central	(409) 996-5437	
July 30, 2020 at 3:35 pm Central	(214) 351-7607	
August 3, 2020 at 6:15 pm Central	(409) 880-5494	
August 5, 2020 at 5:36 pm Central	(713) 679-5434	
August 7, 2020 at 3:11 pm Central	(832) 959-6222	
August 10, 2020 at 2:03 pm Central	(940) 971-4053	
August 10, 2020 at 3:19 pm Central	(214) 476-2369	
August 11, 2020 at 12:08 pm Central	(361) 528-6380	
August 13, 2020 at 2:57 pm Central	(903) 961-7546	
August 13, 2020 at 5:01 pm Central	(214) 393-7980	
August 14, 2020 at 4:34 pm Central	(432) 207-8527	
August 14, 2020 at 6:13 pm Central	(214) 924-3680	
August 24, 2020 at 12:13 pm Central	(214) 889-8960	
August 25, 2020 at 2:59 pm Central	(346) 239-5768	
September 3, 2020 at 1:57 pm Central	(303) 894-3879	
September 7, 2020 at 3:06 pm Central	(817) 754-6935	
September 9, 2020 at 3:43 pm Central	(254) 290-3320	
September 10, 2020 at 6:29 pm Central	(940) 832-5445	
September 11, 2020 at 5:01 pm Central	(832) 786-8956	
September 15, 2020 at 6:43 pm Central	(903) 660-3981	
September 17, 2020 at 12:57 pm Central	(915) 222-6710	
September 17, 2020 at 2:25 pm Central	(979) 667-8481	
September 22, 2020 at 3:30 pm Central	(979) 693-8466	
September 23, 2020 at 3:44 pm Central	(281) 354-5400	
September 24, 2020 at 1:39 pm Central	(915) 409-4450	
September 24, 2020 at 2:15 pm Central	(806) 311-8347	
September 24, 2020 at 3:45 pm Central	(210) 342-5713	
September 25, 2020 at 11:23 pm Central	(713) 535-4090	
September 28, 2020 at 1:08 pm Central	(713) 774-5619	
September 29, 2020 at 2:51 pm Central	(214) 884-3251	
October 2, 2020 at 12:58 pm Central	(214) 330-5474	
October 5, 2020 at 2:50 pm Central	(214) 382-2568	

October 6, 2020 at 3:55 pm Central	(214) 745-0651	
October 7, 2020 at 2:39 pm Central	(214) 225-6769	
October 12, 2020 at 2:04 pm Central	(214) 726-3813	
October 13, 2020 at 1:30 pm Central	(210) 612-2767	
October, 13 2020 at 3:54 pm Central	(972) 598-5779	
October 15, 2020 at 12:58 pm Central	(214) 820-3640	
October 19, 2020 at 3:50 pm Central	(903) 731-3934	
October 20, 2020 at 1:08 pm Central	(214) 442-4785	
October 20, 2020 at 1:58 pm Central	(972) 416-4909	
October 21, 2020 at 1:33 pm Central	(214) 722-4053	
October 21, 2020 at 2:40 pm Central	(903) 616-6009	
October 22, 2020 at 1:15 pm Central	(214) 244-5718	
October 22, 2020 at 5:35 pm Central	(281) 337-4125	
October 23, 2020 at 5:34 pm Central	(214) 281-7510	
October 27, 2020 at 6:09 pm Central	(214) 331-1827	
October 27, 2020 at 6:27 pm Central	(936) 296-3057	
October 28, 2020 at 2:20 pm Central	(214) 224-9513	
October 29, 2020 at 4:24 pm Central	(214) 484-6138	
October 30, 2020 at 2:02 pm Central	(214) 769-2900	
October 30, 2020 at 6:53 pm Central	(210) 703-7509	
November 2, 2020 at 11:21 am Central	(214) 840-9203	
November 3, 2020 at 11:26 am Central	(214) 963-7689	
November 3, 2020 at 1:04 pm Central	(682) 940-3208	
November 3, 2020 at 2:14 pm Central	(281) 664-6960	
November 3, 2020 at 2:39 pm Central	(361) 808-5393	
November 3, 2020 at 2:43 pm Central	(972) 316-3178	
November 3, 2020 at 5:03 pm Central	(214) 852-3716	
November 4, 2020 at 1:06 pm Central	(830) 622-5970	
November 4, 2020 at 3:11 pm Central	(214) 453-9651	
November 4, 2020 at 5:39 pm Central	(214) 984-3917	
November 5, 2020 at 2:15 pm Central	(409) 386-7000	
November 5, 2020 at 2:17 pm Central	(214) 851-2923	

November 5, 2020 at 6:07 pm Central	(325) 283-8465	
November 6, 2020 at 1:17 pm Central	(806) 697-3851	
November 6, 2020 at 2:46 pm Central	(214) 767-5048	
November 6, 2020 at 5:05 pm Central	(512) 897-6098	
November 6, 2020 at 5:17 pm Central	(214) 932-8430	
November 9, 2020 at 5:37 pm Central	(806) 847-5940	
November 10, 2020 at 12:04 pm Central	(214) 342-5150	
November 11, 2020 at 12:51 pm Central	(214) 351-1988	
November 11, 2020 at 4:00 pm Central	(682) 203-3548	
November 12, 2020 at 2:17 pm Central	(832) 209-2041	
November 12, 2020 at 4:28 pm Central	(214) 930-7492	
November 16, 2020 at 1:57 pm Central	(214) 952-7604	
November 16, 2020 at 5:02 pm Central	(979) 877-6190	
November 18, 2020 at 12:44 pm Central	(214) 871-5177	
November 20, 2020 at 1:34 pm Central	(512) 693-8933	
November 24, 2020 at 11:47 pm Central	(817) 812-7690	
November 24, 2020 at 3:56 pm Central	(214) 845-9071	
November 25, 2020 at 3:54 pm Central	(956) 897-5020	
November 25, 2020 at 7:20 pm Central	(512) 539-2338	
November 27, 2020 at 1:49 pm Central	(469) 523-7646	
November 30, 2020 at 5:02 pm Central	(409) 218-3398	
December 1, 2020 at 1:01 pm Central	(214) 769-5321	
December 1, 2020 at 6:29 pm Central	(214) 477-7403	
December 2, 2020 at 12:16 pm Central	(936) 224-3874	
December 2, 2020 at 6:11 pm Central	(214) 555-1652	
December 3, 2020 at 12:06 pm Central	(903) 611-6630	
December 3, 2020 at 4:20 pm Central	(830) 218-7370	
December 4, 2020 at 12:20 pm Central	(936) 257-2981	
December 4, 2020 at 2:51 pm Central	(214) 486-3081	
December 4, 2020 at 4:18 pm Central	(469) 375-3225	
December 7, 2020 at 1:52 pm Central	(214) 426-9527	
December 8, 2020 at 4:12 pm Central		

December 9, 2020 at 5:04 pm Central	(281) 793-2981	
December 10, 2020 at 8:23 am Central	(469) 250-5657	
December 10, 2020 at 2:40 pm Central	(214) 763-2232	
December 10, 2020 at 3:48 pm Central	(940) 313-3734	
December 14, 2020 at 11:05 am Central	(214) 721-9089	
December 14, 2020 at 1:20 pm Central	(972) 935-6832	
December 15, 2020 at 8:09 am Central	(956) 778-8255	
December 15, 2020 at 10:22 am Central	(972) 470-6881	
December 15, 2020 at 12:37 pm Central	(214) 424-8722	
December 16, 2020 at 9:38 am Central	(956) 426-3372	
December 16, 2020 at 12:27 pm Central	(979) 387-2668	
December 16, 2020 at 4:21 pm Central	(972) 835-2590	
December 16, 2020 at 7:09 pm Central	(469) 387-7251	
December 17, 2020 at 9:13 am Central	(469) 716-5897	
December 17, 2020 at 1:13 pm Central	(214) 811-2295	
December 17, 2020 at 4:06 pm Central	(214) 785-4508	
December 18, 2020 at 9:23 am Central	(817) 380-6925	
December 21, 2020 at 5:15 pm Central	(936) 800-7006	
December 23, 2020 at 12:37 pm Central	(936) 888-5486	
December 23, 2020 at 1:51 pm Central	(972) 591-8730	
January 4, 2021 at 11:51 am Central	(832) 825-3776	
January 7, 2021 at 12:39 pm Central	(903) 231-3107	
January 7, 2021 at 1:22 pm Central	(214) 388-8264	
January 8, 2021 at 2:52 pm Central	(985) 493-2128	
January 11, 2021 at 3:44 pm Central	(972) 809-5982	
January 12, 2021 at 1:47 pm Central	(713) 299-4059	
January 12, 2021 at 6:52 pm Central	(713) 261-3478	
January 13, 2021 at 12:29 pm Central	(210) 577-4625	
January 13, 2021 at 5:28 pm Central	(214) 235-3421	
January 13, 2021 at 6:40 pm Central	(281) 564-7883	
January 14, 2021 at 1:24 pm Central	(972) 297-7311	
January 14, 2021 at 2:11 pm Central	(210) 877-4285	

January 19, 2021 at 3:58 pm Central	(214) 328-6855
January 19, 2021 at 4:38 pm Central	(903) 851-6799
January 21, 2021 at 3:28 pm Central	(210) 446-2158

47. Upon information and belief, Mr. McCormick received additional calls to his cell phone from Defendant not included in the list above.

48. Additionally, Mrs. McCormick received calls on instances including but not limited to the following:

Date/Time:	Caller ID:
July 31, 2020 at 3:25 pm Central	(409) 231-7674
August 14, 2020 at 4:54 pm Central	(210) 392-5651
August 17, 2020 at 5:37 pm Central	(214) 442-2799
September 4, 2020 at 3:47 pm Central	(903) 590-3265
September 9, 2020 at 5:29 pm Central	(281) 261-4690
September 14, 2020 at 4:16 pm Central	(956) 831-3209
September 14, 2020 at 4:38 pm Central	(469) 810-4287
September 15, 2020 at 3:24 pm Central	(956) 341-6272
September 16, 2020 at 3:28 pm Central	(830) 285-6794
September 18, 2020 at 2:32 pm Central	(713) 308-2730
September 22, 2020 at 1:48 pm Central	(281) 686-8063
September 23, 2020 at 1:50 pm Central	(469) 470-4662
September 24, 2020 at 2:53 pm Central	(972) 963-6922
September 24, 2020 at 2:56 pm Central	(305) 749-5485
September 25, 2020 at 2:01 pm Central	(469) 987-3459
September 25, 2020 at 3:08 pm Central	(940) 280-7678
September 25, 2020 at 6:33 pm Central	(469) 776-5781
October 15, 2020 at 6:29 pm Central	(469) 583-8161
October 21, 2020 at 1:50 pm Central	(469) 583-8161
October 23, 2020 at 3:49 pm Central	(469) 979-4010

October 26, 2020 at 6:08 pm Central	(469) 539-4879
October 26, 2020 at 6:36 pm Central	(469) 843-2744
October 29, 2020 at 4:36 pm Central	(940) 337-7825
October 30, 2020 at 1:30 pm Central	(737) 703-4562
October 30, 2020 at 1:58 pm Central	(979) 743-3597
October 30, 2020 at 4:03 pm Central	(469) 348-3682
November 2, 2020 at 11:50 am Central	(469) 885-0331
November 2, 2020 at 3:52 pm Central	(469) 968-2606
November 4, 2020 at 11:35 an Central	(469) 483-1158
November 4, 2020 at 4:17 pm Central	(903) 258-6530
November 4, 2020 at 6:36 pm Central	(469) 375-5185
November 5, 2020 at 1:29 pm Central	(469) 551-6499
November 7, 2020 at 12:24 pm Central	(281) 712-8587
November 10, 2020 at 5:41 pm Central	(469) 573-6067
November 10, 2020 at 6:25 pm Central	(469) 776-2872
November 11, 2020 at 1:53 pm Central	(361) 428-6759
November 11, 2020 at 2:50 pm Central	(469) 932-2519
November 11, 2020 4:08 pm Central	(979) 859-5326
November 11, 2020 at 4:34 pm Central	(469) 746-5823
November 12, 2020 at 2:16 pm Central	(432) 273-5474
November 12, 2020 at 3:09 pm Central	(469) 824-6241
November 13, 2020 at 5:19 pm Central	(469) 739-3001
November 16, 2020 at 2:34 pm Central	(830) 875-7190
November 19, 2020 at 3:51 pm Central	(806) 944-2337
November 20, 2020 at 12:48 pm Central	(469) 747-5361
November 20, 2020 at 2:07 pm Central	(832) 824-4612
November 23, 2020 at 12:39 pm Central	(469) 272-2774
November 23, 2020 at 1:09 pm Central	(903) 906-3229
November 23, 2020 at 2:13 pm Central	(430) 983-3176
November 23, 2020 at 4:03 pm Central	(469) 376-6203
November 24, 2020 at 1:19 pm Central	(832) 561-8627
November 24, 2020 at 2:49 pm Central	(469) 828-5739

November 25, 2020 at 2:59 pm Central	(469) 288-1357
November 25, 2020 at 4:06 pm Central	(281) 691-6105
November 25, 2020 at 4:38 pm Central	(361) 242-3422
November 27, 2020 at 12:32 pm Central	(469) 779-7274
November 27, 2020 at 12:38 pm Central	(210) 636-6383
November 30, 2020 at 2:27 pm Central	(469) 588-4186
November 30, 2020 at 3:14 pm Central	(469) 460-5104
December 1, 2020 at 11:36 pm Central	(469) 865-2796
December 1, 2020 at 5:42 pm Central	(469) 883-7766
December 2, 2020 at 3:34 pm Central	(817) 630-5568
December 3, 2020 at 10:58 pm Central	(361) 648-3454
December 3, 2020 at 1:25 pm Central	(469) 242-9432
December 3, 2020 at 3:36 pm Central	(469) 481-0254
December 3, 2020 at 5:35 pm Central	(832) 270-3990
December 4, 2020 at 12:13 pm Central	(512) 848-7076
December 4, 2020 at 4:07 pm Central	(469) 858-2563
December 7, 2020 at 1:45 pm Central	(469) 938-6775
December 8, 2020 at 2:41 pm Central	(972) 641-6239
December 8, 2020 at 3:01 pm Central	(713) 374-7200
December 8, 2020 at 7:38 pm Central	(713) 562-2243
December 9, 2020 at 11:55 pm Central	(915) 778-6192
December 9, 2020 at 4:30 pm Central	(512) 621-8939
December 10, 2020 at 12:02 pm Central	(904) 361-6373
December 10, 2020 at 3:43 pm Central	(956) 614-5462
December 11, 2020 at 3:23 pm Central	(832) 208-3840
December 11, 2020 at 3:24 pm Central	(915) 521-4452
December 11, 2020 at 3:40 pm Central	(713) 595-7400
December 11, 2020 at 4:09 pm Central	(832) 658-6175
December 11, 2020 at 6:51 pm Central	(346) 763-5941
December 14, 2020 at 1:16 pm Central	(979) 413-6917
December 14, 2020 at 1:56 pm Central	(469) 268-5652
December 16, 2020 at 10:55 am Central	(713) 475-6642

December 17, 2020 at 11:18 am Central	(903) 398-5774
December 17, 2020 at 1:53 pm Central	(210) 714-2076
December 17, 2020 at 4:06 pm Central	(281) 842-7328
December 18, 2020 at 3:40 pm Central	(361) 311-6775
January 13, 2021 at 1:12 pm Central	(469) 766-6452
January 13, 2021 at 1:30 pm Central	(361) 553-2560
January 14, 2021 at 11:21 am Central	(817) 228-6500
January 15, 2021 at 11:10 am Central	(254) 228-5654
January 18, 2021 at 2:33 pm Central	(903) 908-7165
January 18, 2021 at 4:04 pm Central	(936) 253-3270
January 18, 2021 at 4:44 pm Central	(512) 418-7646
January 18, 2021 at 5:34 pm Central	(210) 957-7937
January 19, 2021 at 8:42 am Central	(305) 260-6695
January 19, 2021 at 9:32 am Central	(305) 260-6695
January 19, 2021 at 9:43 am Central	(305) 260-6695
January 19, 2021 at 9:54 am Central	(305) 260-6695
January 19, 2021 at 9:59 am Central	(305) 260-6695
January 19, 2021 at 11:27 am Central	(979) 223-2907

49. Upon information and belief, Mrs. McCormick received additional calls from Defendant not included in the above list.

50. In total, Plaintiffs have collectively received 250 telephone solicitation calls.

51. Each of these calls contained a pre-recorded message utilizing identical scripts and voices.

52. Each of the calls at issue were made for telemarketing purposes and did not convey exigent healthcare information.

53. The McCormicks were annoyed, irritated, upset and experienced a sense that their privacy was violated by Defendant as a result of receiving the numerous phone calls after they had long been registered on the National Do Not Call Registry.

54. The foregoing acts and omissions were in violation of the TCPA.

COUNT I
DEFENDANT VIOLATED THE TCPA 47 U.S.C. § 227(b)
(Matthew McCormick and Gina McCormick v. Molina Healthcare)

55. Plaintiffs incorporate the forgoing paragraphs as though the same were set forth at length herein.

56. The TCPA prohibits placing calls or texts using an automatic telephone dialing system or automatically generated or prerecorded voice to a cellular telephone except where the caller has the prior express consent of the called party to make such calls or where the call is made for emergency purposes. 47 U.S.C. § 227(b)(1)(A)(iii).

57. By placing prerecorded voice calls to the cell phones of the McCormicks without first obtaining that prior express written consent Defendant violated the TCPA, including, but not limited to 47 U.S.C. § 227(b)(1).

58. Defendant's calls were not made for "emergency purposes".

59. Defendant's calls to the Plaintiffs' cell phones were made without any prior express consent.

60. The TCPA provides for a private right of action and statutory damages of \$500.00 per violation, and up to \$1,500.00 if the violation is determined to be willful. 47 U.S.C. § 227(b)(3).

61. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiffs' rights under the law and with the purpose of harassing Plaintiff.

23. The acts and/or omissions of Defendant were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.

24. As a result of the above violations of the TCPA, Plaintiffs have suffered the losses and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles damages.

COUNT II
DEFENDANT VIOLATED THE TCPA 47 U.S.C. § 227(c)(5)
(Matthew McCormick v. Molina Healthcare)

25. Plaintiff Matthew McCormick incorporates the forgoing paragraphs as though the same were set forth at length herein.

26. The TCPA prohibits any person or entity of initiating any telephone solicitation to a residential telephone subscriber who has registered his or her telephone number on the National Do-Not-Call Registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government. 47 U.S.C. § 227(c).

27. Defendant contacted the Plaintiff despite the fact that the Matthew McCormick has been registered on the Do Not Call Registry since as early as July 1, 2014.

28. The TCPA provides that it is a violation of the law for a person whose phone number is registered on the National Do Not Call Registry to receive more than one solicitation call on their phone "within any 12-month period by or on behalf of the same entity." See 47 U.S.C. §§ 227(c)(1), (c)(5); 47 C.F.R. § 64.1200(c)(ii).

29. The TCPA defines a “telephone solicitation” as a “call or message for the purpose of encouraging the purchase of goods, or services which is transmitted to any person.” 47 U.S.C. §227(a)(4).

30. The Federal Communications Commission’s regulations implementing the TCPA provide that telephone solicitations cannot be made to a recipient without the recipient’s “prior express written consent.” *See* FCC 12-21, CG Docket 02-278 (effective October 16, 2013); 47 C.F.R § 64.1200(a)(2).

31. The penalty for each call made in violation of the TCPA’s restrictions on placing telemarketing calls to numbers registered on the National Do Not Call Registry is \$500.00 per violation and up to \$1,500.00 per violation if the violation is determined to be willful. *See* 47 U.S.C. §§ 227(c)(5).

32. In addition, the TCPA allows the Court to enjoin Defendant’s violations of the TCPA’s regulations prohibiting calls to phone numbers registered on the National Do Not Call Registry. *See* 47 U.S.C. §§ 227(c)(5)(A).

33. By calling the Matthew McCormick’s cell phone after his telephone number was registered on the National Do Not Call Registry, Defendant violated the TCPA, including, but not limited to, 47 U.S.C. §§ 227(c)(1) and the TCPA’s corresponding regulations.

34. Defendant knew or should have known that the Matthew McCormick had his telephone number registered on the Do Not Call Registry.

35. The Matthew McCormick is entitled to damages of \$500.00 per violation for each call placed and up to \$1,500.00 per violation if the Court finds that Defendant willfully violated the TCPA.

PRAYER FOR RELIEF

Wherefore, Plaintiffs, **Matthew McCormick and Gina McCormick**, respectfully pray for judgment as follows:

- a. For both Plaintiffs: All actual damages suffered (as provided under 47 U.S.C. § 227(b)(3)(A));
- b. For both Plaintiffs: statutory damages of \$500.00 per violative telephone call (as provided under 47 U.S.C. § 227(b)(3)(B));
- c. For both Plaintiffs: Treble damages of \$1,500.00 per violative telephone call (as provided under 47 U.S.C. § 227(b)(3));
- d. For Matthew McCormick Only: statutory damages of \$500.00 per violative telephone call (as provided under 47 U.S.C. § 227(c)(5)(B));
- e. For Matthew McCormick Only: Additional treble damages of \$1,500.00 per violative telephone call (as provided under 47 U.S.C. § 227(c)(5)(C));
- f. For Both Plaintiffs: Injunctive relief (as provided under 47 U.S.C. § 227(b)(3) and (c)); and
- g. For Both Plaintiffs: Any other relief this Honorable Court deems appropriate.

DEMAND FOR JURY TRIAL

Please take notice that Plaintiffs, **Matthew McCormick and Gina McCormick**, demand a jury trial in this case.

Respectfully submitted,

Dated: January 7, 2022

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